

NATIONAL ARBITRATION
BEFORE IMPARTIAL ARBITRATOR STEPHEN B. GOLDBERG

In the Matter of Arbitration)	
)	
between)	
)	
UNITED STATES POSTAL SERVICE)	Case No. Q06C-4Q-C 10033773
)	Rescission of Handbook AS-707 F and
and)	Issuance of Publication 156
)	
AMERICAN POSTAL WORKERS)	
UNION, AFL-CIO)	
)	

BEFORE: Stephen B. Goldberg, Arbitrator

APPEARANCES:

United States Postal Service: Kevin B. Rachel, Labor Counsel; Jeffery A. Meadows, Labor Relations Specialist

American Postal Workers Union, AFL-CIO: Melinda K. Holmes, Attorney; Anton J. Hajjar, Attorney (Murphy Anderson, PLLC)

Place of Hearing: United States Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C.

Hearing Dates: February 10, 2015

Date of Award: June 8, 2015

Relevant Contract Provisions: Articles 1, 5, 7, 19

Contract Year: 2010-2015

Type of Grievance: Contract Interpretation

SUMMARY OF AWARD

The Postal Service did not violate Article 19 by rescinding Handbook AS-707 F, *Contracting for Contract Postal Units*, and replacing it with Publication 156, *Postal Employees Guide to Contract Postal Units*.



Stephen B. Goldberg, Arbitrator

June 8, 2015

I. SUMMARY OF RELEVANT EVIDENCE

A Contract Postal Unit (CPU) is a contractor-owned and operated facility which, pursuant to a contract with the Postal Service, provides selected postal services and products to the public. CPUs have been utilized by the Postal Service for many years in furtherance of its policy of making postal services and products available when doing so by establishing a traditional post office would be impracticable. This policy is made plain by Postal Service Handbook AS – 707 F, *Contracting for Contract Postal Units* (1989), which sets out circumstances that may warrant the establishment of a CPU:

- a. A newly developed community requires retail services, but does not yet warrant a Postal Service facility;
- b. Present retail units are not able to serve customers efficiently because of either limited space or high customer demand;
- c. There are no retail units located in an area of high customer demand;
- d. Flexibility in service hours is needed;
- e. Only limited retail services are necessary;
- f. An independent post office has been closed;
- g. The Postal Service will realize service, scheduling, cost, or other benefits from the CPU.

According to the Postal Service cover letter accompanying the issuance of Handbook AS-707 F:

This handbook is for field personnel involved in the procurement process for contract postal units (CPUs). It

includes guidelines and procedures for writing requirements, specifications and statement of work: soliciting proposals, evaluating offers, and awarding and administering contracts. It also includes many references to the Document Generator System (DGS) used to facilitate the procurement of CPUs and sample documents produced via the DGS for this type of procurement.

Included in Handbook AS-707 F are chapters entitled *Policy; Submitting Requests for Contracts; Source Selection and Award; Contract Administration; and Public Service Contracts*. In addition, Handbook AS-707 F contains *Exhibit A. Requisition Documents; Exhibit B. Sample Contract Postal Unit Documents; and Exhibit C. Sample Solicitation for CPUs*.

Handbook AS – 707 F also sets out conditions that must be satisfied for the Postal Service to enter into a contract for a CPU:

- The contractor may not be a Postal Service employee or a member of his/her immediate family (Section 1.4.1.)
- The contractor may handle nonpostal sales and transactions only if they take place in an area separate and distinct from the CPU and if the funds are kept separate. (Section 1.4.4.)
- The contract must be for a firm fixed price, subject to termination by either party with 60 days' notice. (Section 1.4.5.)
- The CPU must be located in a contractor-owned and operated facility. (Section 1.5.1.)
- The CPU must, if possible, be handicap accessible. (Section 2.3.3.)
- Hours of service and hours of operation must take account of customer convenience and time needed for administrative operations. (Section 2.3.4.)
- A CPU may not provide meter setting; non-mail services, such as passport applications; bulk and permit mail acceptance. (Section 2.3.6.4.)

- The contractor must be trustworthy and well-regarded within the local community. He/she must also have the financial resources needed to provide the required services. (Section 3.6.)

Because, according to APWU Assistant Clerk Division Director Lamont Brooks, CPUs were typically small, comparable in size to the smallest post offices (generally staffed by a postmaster rather than a bargaining unit clerk), and because CPUs were intended to supplement, rather than replace, traditional post offices, the Union did not view CPUs as necessarily encroaching upon the work of bargaining unit clerks. Hence, the Union did not generally oppose the establishment of CPUs. The Union did, however, challenge those CPU contracts that it viewed as having been let in violation of the specific limitations of Handbook AS- 707 F, which, the Union contends, is binding on the Postal Service by virtue of Article 19 of the Agreement.

On two occasions in 1999 the Union protested CPU contracts on the ground that they were not in compliance with Handbook AS-707 F. On both occasions, Postal Service Headquarters responded to the Union's protests by sending a memorandum to all Area Vice Presidents, stating:

It has come to our attention that there may be Contract Postal Units (CPUs) that may not have been established in compliance with the current guidelines as outlined in the Handbook AS-707 F. . . In order to correct any misapplication of current process and comply in the future, please review CPU contracts in your area to ensure that they are in compliance with our current procedures.

In 2006, the Union filed a Step 4 dispute challenging CPU contracts let by the Postal Service to operators who owned the facilities in which the CPUs were operated, but leased, rather than owned, the property on which the facilities were located. This arrangement, the Union contended, violated AS-707 F Chapter 1.5.1, which defines a CPU as a "contractor-owned and operated facility". The Postal Service, in response, denied that a CPU operator was required by Chapter 1.5.1. to own the property on which the CPU was located. The Postal Service also

took the position that Handbook AS-707 F was not an Article 19 handbook, hence was not enforceable by the Union. The Union appealed the dispute to arbitration, but on May 17, 2007, prior to arbitration, the parties entered into the following settlement agreement:

The interpretive issues presented are whether there is a violation of the national agreement, specifically Articles 1, 7, and 19, when contracts are let for a Contract Postal Unit (CPU) to contractors who do not own the property/facility.

1. The Postal Service will comply with the requirements of the existing Handbook AS-707F, Section 1.5.1, which defines a CPU as "a contractor-owned and operated facility, under contract to the Postal Service and under the jurisdiction of an administrative post office."
2. A contract postal unit may not be located on property which is owned or leased by the Postal Service.
3. As of the date of this MOU, competitor's-branded products and services, including those of UPS, FedEx, and DHL, may not be sold at any newly-established contract postal unit. Any exceptions to this exclusivity requirement may be evaluated and approved by Headquarters Retail Access Channels (or its successor).

The parties subsequently disagreed about the meaning of the 2007 Settlement Agreement, the Union taking the position that the settlement sustained its position that a CPU operator must own both the facility and the property on which the facility is located.¹ The Postal Service, on the other hand,

¹ In support of its position, the Union advised its locals that they should grieve Postal Service awards of CPU contracts to operators who did not own the property on which the CPU was located, and that they should rely on Article 19 (as well as Articles 1 and 7) in support of such grievances.

took the position that the settlement established that a CPU operator need only own the facility in which the CPU is located, not the property on which that facility is located.

In October 2008, a grievance was filed in Cheyenne, WY, asserting a contract violation in the case of a CPU operator who rented the space in which the CPU was located. The Postal Service asserted that the Union's position had been rejected by the 2007 Settlement Agreement, and initiated an interpretative dispute under Article 15 to determine the correct interpretation of the 2007 Settlement Agreement as it applied to the operator of a CPU who does not own the property on which the CPU is located.²

On October 13, 2009, the Postal Service notified the Union that it planned to issue Publication 156, *Postal Employees Guide to Contract Postal Unit Operations* as a replacement for Handbook AS-707 F. The Postal Service notice stated that it was sent to the Union "as a matter of general interest", and that Publication 156 was not covered by Article 19 because it did not "directly relate to wages, hours, or working conditions".

Attached to the Postal Service notice was a side-by-side comparison of Handbook AS-707 F and Publication 156. This comparison showed that the Handbook AS-707 F definition of a CPU as a "contractor-owned and operated facility" was replaced by the Publication 156 definition of a CPU as a "supplier-owned or supplier-leased site operated by the supplier".

On December 8, 2009, the Union initiated a national interpretive dispute, asserting that by annulling Handbook AS-707 F and replacing it with Publication 156, the Postal Service violated both Article 19 and the 2007 Settlement Agreement. The Postal Service rejected the Union's assertions, and the matter proceeded to national level arbitration on February 10, 2015.³

² The parties agree that the correct interpretation of the 2007 Settlement Agreement on this issue is pending in another dispute and is not to be decided by the Arbitrator in the instant case.

³ In the period between the 2009 filing of the national interpretive dispute and the 2015 arbitration hearing, the parties, in the 2010 National Agreement, entered into the following MOU re Contract Postal Units:

The Postal Service will close or convert to in-house operations as soon as practicable the following full-service Contract Postal Units (CPUs) that provide

II. ISSUE PRESENTED

Article 19 of the Agreement provides, in relevant part:

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. . .

Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Union at the national level at least sixty (60) days prior to issuance. The Employer shall furnish the Union with the following information about each proposed change: a narrative explanation of the purpose and the impact on employees and any documentation concerning the proposed change from the manager(s) who requested the change addressing its purpose and effect. Proposed changes will be furnished to the Union by hard copy or, if available, by electronic file. At the request of the Union, the parties shall meet concerning such changes. If the Union requests a meeting concerning proposed changes, the meeting will be attended by manager(s) who are knowledgeable about

solely postal services with box sections. [List of CPUs to be closed or converted not reproduced here.] The parties will meet to discuss the precise dates on which these CPUs will be closed or converted.

In addition, with regard to any other full-service CPUs, or any new or existing CPUs located in close proximity to a postal retail facility, the parties at the union's request will meet to discuss and consider other options for addressing the provision of retail services in these locations.

the purpose of the proposed change and its impact on employees. . .

The parties agree that this case presents the issue of whether the Postal Service violated Article 19 by rescinding Handbook AS-707 F and replacing it with Publication 156. The Union asserts that the case also presents the issue of whether the Postal Service violated the prohibition of unilateral action contained in Article 5 of the National Agreement by replacing the definition of a CPU as a “contractor-owned and operated facility” contained in the 2007 Settlement Agreement (as well as in Handbook AS-707 F) with the Publication 156 definition of a CPU as “a supplier or supplier-leased site operated by the supplier”.

The Postal Service has conceded, however, that Publication 156 does not affect or override whatever rights the Union may have under the 2007 Settlement Agreement. Since Publication 156 has no effect on the 2007 Settlement Agreement, this case does not present the issue of whether the Postal Service’s issuance of Publication 156 violated Article 5 by unilaterally altering the 2007 Settlement Agreement.

The sole issue to be decided here is whether the Postal Service violated Article 19 by rescinding Handbook AS-707 F and replacing it with Publication 156. In considering this issue, I shall treat the Postal Service rescission of Handbook AS-707 F and its issuance of Publication 156 as one issue, not two. The core of the Union’s challenge to Publication 156, apart from its alleged inconsistency with the 2007 Settlement Agreement, is that it was intended to replace Handbook AS-707 F, which the Union contends was protected from unilateral replacement by Article 19. The question here presented is thus whether Handbook AS-707 F was an Article 19 Handbook.

III. DISCUSSION

Article 19 applies only to those parts of Postal Service handbooks, manuals and regulations that “directly relate to wages, hours or working conditions”. The Postal Service has the undoubted Article 3 right to provide, and subsequently alter, guidance to field managers on executing Postal Service policies. The Postal Service contends, and I agree, that those parts of Handbook AS-707 F that provide guidance to managers, and do not establish rules that employees must follow, nor impact existing employee rights or benefits, do not “directly relate to wages, hours or working conditions”, hence do not fall within Article 19.

The Union concedes, as it must, that substantial portions of Handbook AS-707 F consist solely of guidance to field managers on contracting for and administering CPUs, and that these portions of Handbook AS-707 F do not fall within Article 19. The Union asserts, however, that those provisions of Handbook AS-707 F that impose specific limitations on Postal Service freedom to establish CPUs do fall under Article 19 because they were intended by the Postal Service to protect employee rights. According to the Union:

. . . [T]he AS-707 F Handbook was a line the Postal Service drew around CPUs to keep them out of work and facilities belonging to the bargaining unit. . .

The difficulty with this argument is that there is no evidence that it was the purpose of the Postal Service, in establishing the terms on which it would enter into CPU contracts, to protect Union claims to work. Initially, it is unlikely that the Postal Service, or any other unionized employer, in drafting, without union participation, the terms on which it will do business with others, would seek to protect the union’s interest in guarding work currently done by bargaining unit employees or that might be done by those employees. To be sure, such protections are common when a union and an employer jointly negotiate the terms under which the employer may contract out bargaining unit work to others. (*See, for example, Article 32 (Subcontracting), and the MOU on Consideration of*

National Outsourcing Initiatives). The Union did not, however, participate in the drafting of Handbook AS-707 F, and there is no evidence that the provisions on which the Union relies were drafted by the Postal Service for the purpose of preserving work for bargaining unit employees.

Indeed, an examination of the conditions imposed by the Postal Service on CPU contracts makes plain that their purpose was to further Postal Service goals, which they do by guarding against conflicts of interest in the operation of a CPU, insuring the financial and operational stability of CPUs, and providing satisfactory service to customers. Section 1.4.1. of Handbook AS-707 F provides that neither Postal Service employees nor their immediate families may operate a CPU (conflict of interest); Section 1.4.4. provides that funds received from nonpostal sales and transactions must be kept separate (protection of Postal Service funds); Section 2.3.3 provides that the CPU must, if possible, be handicap accessible (service to customers); and Section 3.6 provides that the contractor must have the financial resources to provide the required services (financial and operational stability). It is evident that these and similar Handbook AS-707 F conditions on the award of CPU contracts are concerned with the Postal Service's interest in the satisfactory functioning of CPUs, rather than the protection of work for bargaining unit employees.

The Union next argues that the Postal Service, for many years prior to the instant dispute, recognized Handbook AS-707 F as binding on it by virtue of Article 19, and that it should be estopped from taking a different position in this case. The Postal Service actions on which the Union relies do not, however, provide evidence that the Postal Service accepted the Union view that Handbook AS-707 F was binding on it under Article 19.

Initially, the Union relies on evidence that the response of Postal Service Headquarters to 1999 Union complaints that certain CPUs were not in compliance with Handbook AS-707 F was to direct Area Vice Presidents to "review CPU contracts in your area to ensure that they are in compliance with our current procedures". There was, however, no mention of Article 19 in that directive and no suggestion that compliance with Handbook AS-707 F guidelines was required

by anything other than the Postal Service's interest in local management abiding by national directives.

As for the 2007 Settlement Agreement, on which the Union also relies in arguing that the Postal Service has consistently recognized Handbook AS-707 F as an Article 19 handbook, the Postal Service, in its 15-day Statement of Issues leading up to the Settlement Agreement, explicitly asserted that Handbook AS-707 F was not an Article 19 handbook. To be sure, the introductory paragraph of the Settlement Agreement stated that the interpretive issues involved included whether Article 19 (as well as Articles 1 and 7) was violated by a CPU contract awarded to an operator who did not own the property on which the CPU was located, a requirement the Union based on Handbook AS-707 F. However, the Postal Service's agreement that the Union's claim presented a question concerning the proper interpretation of Article 19 did not constitute an admission, either explicit or implicit, that Handbook AS-707 F was an Article 19 Handbook. By admitting the existence of an interpretive issue, the Postal Service can hardly be said to have conceded that the Union's position on that issue was correct.

Nor does the Settlement Agreement itself, which is silent with respect to Article 19, constitute a Postal Service admission that Article 19 required its compliance with Handbook AS-707 F. The Postal Service stated that it would comply with Handbook AS-707 F, but nowhere stated that it was doing so because Article 19 requires such compliance, rather than because it had issued Handbook AS-707 F.⁴ In sum, the 2007 Settlement Agreement provides no support for the Union's contention that the Postal Service accepted the view that Handbook AS-707 F is binding on the Postal Service by virtue of Article 19.

The Union's position is also unsupported by the national interpretive dispute filed by the Postal Service in 2008, on which the Union also relies. In that case, the Union complained that the Postal Service had violated the contract by awarding a CPU to an operator who rented the space in which the CPU was

⁴ The Union's post-Settlement Agreement instructions to its locals that they should enforce the requirements of Handbook AS-707 F, relying upon Article 19 in doing so, reflects the Union's interpretation of the Settlement Agreement, not that of the Postal Service.

located. The Postal Service response was not that Article 19 did not apply to the award of CPU contracts under Handbook AS-707 F, but rather that the Union's assertion that a CPU operator must own the property on which the CPU was located had been rejected by the 2007 Settlement Agreement. The national interpretive dispute filed by the Postal Service, then, did not seek an interpretation of Article 19, much less concede the applicability of Article 19 to CPU awards under Handbook AS-707 F. Rather, it sought solely an interpretation of the 2007 Settlement Agreement.

Finally, the Union argues that if Handbook AS-707 F limitations are not enforceable under Article 19, there will exist no clear, written definition of the circumstances under which a CPU violates Articles 1 and 7. Such a result, the Union asserts, will weaken its ability to protect against loss of bargaining unit work to "illegitimate" CPUs. Accordingly, the Union would appear to suggest, the Union's Article 1 and 7 rights to protect bargaining unit work will be negatively impacted if the Postal Service is not required by Article 19 to enforce Handbook AS -707 F.

The flaw in this argument lies in the Union's assumption that the limitations of Handbook AS-707 F on the establishment of CPUs establish or define Union rights under Articles 1 and 7. They do not. Although the Postal Service has often responded positively to Union complaints that particular CPU contracts that were not in compliance with Handbook AS-707 F should be annulled, its doing so neither created nor defined Union rights under Articles 1 and 7. Accordingly, if the Postal Service declines to require compliance with Handbook AS-707 F, it does not impact upon the Union's Article 1 and 7 rights, much less deprive the Union of those rights.⁵

⁵ Because Handbook AS-707 F and Articles 1 and 7 are entirely separate, with the result that the Union may not rely upon a Postal Service failure to comply with Handbook AS 707 F as demonstrating a violation of Articles 1 and 7, it follows that the Postal Service may not rely upon its compliance with Handbook AS-707 F as proof that in establish a particular CPU, it has not violated Articles 1 and 7. See Case No. H8C-NA-C-61 (Gamser, 1982); Case No. Q94T-4Q-C 98099959 (Das, 2009).

For all these reasons, I reject the Union's argument that in rescinding Handbook AS-707 F, *Contracting for Contract Postal Units*, and replacing it with Publication 156, *Postal Employees Guide to Contract Postal Units*, the Postal Service violated Article 19.

IV. AWARD

The Postal Service did not violate Article 19 by rescinding Handbook AS-707 F, *Contracting for Contract Postal Units*, and replacing it with Publication 156, *Postal Employees Guide to Contract Postal Units*.



Stephen B. Goldberg, Arbitrator

June 8, 2015